

ESTTA Tracking number: **ESTTA378606**

Filing date: **11/15/2010**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Petition for Cancellation

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

| | | | |
|---------|--|-------------|----------|
| Name | CGM 835 AVE LLC | | |
| Entity | limited liability company | Citizenship | Delaware |
| Address | c/o Neil Faggen 1101 Fayette Street, Second Floor Conshohocken, PA 19428 UNITED STATES | | |

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| Attorney information | Peter Nussbaum Wolff & Samson PC One Boland Drive West Orange, NJ 07052 UNITED STATES pnussbaum@wolffsamson.com Phone:973-530-2025 |
|----------------------|---|

Registration Subject to Cancellation

| | | | |
|-----------------|--|-------------------|------------|
| Registration No | 3343163 | Registration date | 11/27/2007 |
| Registrant | Le Pays Basque, Inc. 17 West 54 Street Apt 11D New York, NY 10019 UNITED STATES | | |

Goods/Services Subject to Cancellation

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| Class 043. First Use: 1959/12/31 First Use In Commerce: 1959/12/31 All goods and services in the class are cancelled, namely: Restaurants |
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Grounds for Cancellation

| | |
|-------------|--------------------------|
| Abandonment | Trademark Act section 14 |
|-------------|--------------------------|

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|-------------|---|
| Attachments | PETITION FOR CANCELLATION-LA COTE BASQUE.PDF (5 pages)(111963 bytes) |
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

| | |
|-----------|------------------|
| Signature | /Peter Nussbaum/ |
| Name | Peter Nussbaum |
| Date | 11/15/2010 |

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE
THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of Registration No. 3,343,163 issued on November 27, 2007

CGM 835 Ave LLC,

Petitioner,

v.

Le Pays Basque, Inc.,

Registrant.

Cancellation No. _____

BOX TTAB FEE
Commissioner for Trademarks
U.S. Patent and Trademark Office
P.O. Box 1451
Alexandria, VA 22313-1451

PETITION FOR CANCELLATION

In the matter of the registration of the service mark **LA COTE BASQUE**, Registration No. 3,343,163 issued on November 27, 2007 (hereinafter referred to as “Registrant’s Mark”), owned by Le Pays Basque, Inc., a New York corporation with a principal business address of 17 West 54 Street, Apt. 11D, New York, New York 10019 (“Registrant”), covering restaurants in International Class 43, CGM 835 Ave LLC, a Delaware limited liability company with a principal business address c/o Neil Faggen, 1101 Fayette Street, Second Floor, Conshohocken, Pennsylvania 19428 (“Petitioner”)

believes it is being damaged and will continue to be damaged by such registration and hereby petitions for the cancellation thereof.

1. Petitioner is a Delaware limited liability company having a principal business address c/o Neil Faggen, 1101 Fayette Street, Second Floor, Conshohocken, Pennsylvania 19428.

2. Petitioner is the owner of pending United States service mark application Serial No. 85/004,181 for the mark **BAR BASQUE** for restaurant services in International Class 43. Petitioner's application has been refused registration on the basis of an alleged likelihood of confusion under Section 2(d) of the Lanham Act with Registration No. 3,343,163 for the mark **LA COTE BASQUE** owned by Registrant.

3. Upon information and belief, the owner of Registration No. 3,343,163 for the mark **LA COTE BASQUE**, as set forth in the records of the United States Patent and Trademark Office ("PTO"), is Le Pays Basque, Inc., a New York corporation with a principal business address of 17 West 54 Street, Apt. 11D, New York, New York 10019.

4. Petitioner believes that it will be damaged by the continued registration of Registration No. 3,343,163 for the mark **LA COTE BASQUE** in International Class 43 for restaurants as these services relate to the restaurant services in International Class 43 covered by Petitioner's application, and Petitioner hereby petitions for cancellation of same on the grounds set forth herein:

COUNT I – Abandonment

5. Petitioner repeats and re-alleges each and every allegation set forth in paragraphs 1-4.

6. Upon information and belief, Registrant has discontinued use of the mark **LA COTE BASQUE** in connection with the services covered by Registration No. 3,343,163 prior to the filing of this petition for cancellation and Registrant has no intent to resume such use.

7. Upon information and belief, Registrant's single location **LA COTE BASQUE** restaurant located in New York City shut down in 2004. The restaurant briefly reopened under a different name "Brasserie LCB" or "Brasserie La Cote Basque" in 2006, but permanently closed no later than early in 2007 (right around the time of the March 7, 2007 filing of the application that matured into the subject Registration).

8. Upon information and belief, Registrant has not used the mark **LA COTE BASQUE** for more than three consecutive years which is prima facie evidence of abandonment.

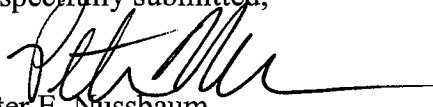
9. As a result of Registrant's failure to use the mark **LA COTE BASQUE** in connection with the services covered by Registration No. 3,343,163, and with no intent to resume such use, the mark **LA COTE BASQUE** has been abandoned for purposes of Section 45 of the Trademark Act.

10. Since, upon information and belief, Registrant has abandoned the mark **LA COTE BASQUE** covered by Registration No. 3,343,163, the subject Registration should be cancelled.

WHEREFORE, Petitioner respectfully requests that Registration No. 3,343,163
be cancelled in International Class 43 from the Principal Register.

Dated: November 15, 2010

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Peter E. Nussbaum', with a long horizontal flourish extending to the right.

Peter E. Nussbaum
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CERTIFICATE OF SERVICE

It is hereby certified that a true and correct copy of the foregoing Petition For Cancellation was served via first class mail on Le Pays Basque, Inc., at 17 West 54 Street, Apt. 11D, New York, New York 10019, on this 15th day of November, 2010.

A handwritten signature in black ink, appearing to read 'Peter E. Nussbaum', written over a horizontal line.

PETER E. NUSSBAUM
Wolff & Samson PC
Attorney for Petitioner,
CGM 835 Ave LLC